

NO. 44347-3-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ANGELA LEIGH BOHRER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Rosanne Buckner

No. 12-1-01071-6

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A.	<u>ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR</u>	1
1.	Whether there was sufficient evidence to support the jury's finding the defendant guilty of burglary in the second degree?.....	1
2.	Whether there was sufficient evidence for the jury to find defendant guilty of unlawful possession of a stolen vehicle?	1
B.	<u>STATEMENT OF THE CASE</u>	1
1.	Procedure	1
2.	Facts.....	2
C.	<u>ARGUMENT</u>	13
1.	THERE IS SUFFICIENT EVIDENCE TO SUPPORT DEFENDANT'S CONVICTIONS WHERE THE JURY COULD INFER THAT DEFENDANT EITHER STOLE THE ITEMS OR ACTED AS AN ACCOMPLICE TO THE CRIMES.....	13
D.	<u>CONCLUSION</u>	23

Table of Authorities

State Cases

<i>State v. Bennett</i> , 161 Wn.2d 303, 307, 165 P.3d 1241 (2007).....	13
<i>State v. Bobenhouse</i> , 143 Wn. App. 315, 324, 177 P.3d 209 (2008)	14
<i>State v. Camarillo</i> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	14
<i>State v. Chavez</i> , 138 Wn. App. 29, 34, 156 P.3d 246 (2007).....	20
<i>State v. Chelly</i> , 32 Wn. App. 916, 919, 651 P.2d 759 (1982).....	17, 18
<i>State v. Davenport</i> , 100 Wn.2d 757, 765-65, 675 P.2d 1213 (1984).....	14
<i>State v. Goodman</i> , 150 Wn.2d 774, 781, 83 P.3d 410 (2004)	13
<i>State v. Jones</i> , 146 Wn.2d 328, 333, 45 P.3d 1062 (2002)	20
<i>State v. Joy</i> , 121 Wn.2d 333, 338, 851 P.2d 654 (1993).....	13
<i>State v. McDonald</i> , 123 Wn. App. 85, 89-90, 96 P.3d 468 (2004).....	15
<i>State v. McDonald</i> , 138 Wn.2d 680, 688, 981 P.2d 443 (1999)	14
<i>State v. Nyegaard</i> , 154 Wn. App. 641, 226 P.3d 783 (2010).....	21
<i>State v. Partin</i> , 88 Wn.2d 899, 906, 567 P.2d 1136 (1977), overruled on other grounds by, <i>State v. Lyons</i> , 174 Wn.2d 354, 275 P.3d 314, 320 (2012)	20
<i>State v. Polo</i> , 169 Wn. App. 750, 760-61, 282 P.3d 1116 (2012).....	20
<i>State v. Salinas</i> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	13
<i>State v. Shumaker</i> , 142 Wn. App. 330, 334, 174 P.3d 1214 (2007)	20-21
<i>State v. Teal</i> , 152 Wn.2d 333, 338-339, 96 P.3d 974 (2004).....	14, 15

<i>State v. Thomas</i> , 150 Wn.2d 821, 874, 83 P.3d 970 (2004)	13
---	----

<i>State v. Turner</i> , 103 Wn. App. 515, 524, 13 P.3d 234 (2000).....	21
---	----

Statutes

RCW 9A.08.020(3)(a)(i)	14
------------------------------	----

RCW 9A.52.030(1).....	15
-----------------------	----

RCW 9A.56.068	19
---------------------	----

RCW 9A.56.140	19
---------------------	----

RCW 9A.56.140(1).....	21
-----------------------	----

Other Authorities

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, p. 468 (2002)	21
---	----

Appendices

Appendix A	
------------	--

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether there was sufficient evidence to support the jury's finding the defendant guilty of burglary in the second degree?
2. Whether there was sufficient evidence for the jury to find defendant guilty of unlawful possession of a stolen vehicle?

B. STATEMENT OF THE CASE.

1. Procedure

On March 26, 2012, the State charged Angela Bohrer, defendant, with one count of burglary in the second degree and one count of unlawful possession of a stolen vehicle. CP 1-2.

Trial commenced on October 17, 2012, in front of the Honorable Rosanne Buckner. CP Supp. 89. On October 24, 2012, the jury found defendant guilty on both counts as charged. 8RP 497¹; CP 72, 73.

On December 21, 2012, the court sentenced defendant to a total of fifty one months. 12/21/2013RP 28; CP 171.

On December 21, 2012, defendant timely filed a notice of appeal. CP 178.

¹ The transcripts with volume numbers will be referred to by the volume number followed by the page number. The rest of the transcripts will be referred to by the date of the proceedings followed by the page number.

2. Facts

"A Storage Center," a self storage facility in Parkland Washington, is entirely enclosed by fencing and a locked gate is used to enter and exit the premises. 5RP 223. Every tenant is given a unique individual code, which must be entered into a key pad in order to unlock the gate for entry and exit of the facility. 5RP 223.

The facility is also equipped with video cameras for surveillance. 5RP 226. The cameras are located in the front entry area, the exit gate, the office, and on the first floor in front of the elevator used to access the second floor storage units. 5RP 226. Each individual storage unit is secured with a padlock provided by the tenants. 5RP 226.

The storage facility was normally accessible to tenants from 7:00 a.m. to 8:00 p.m., seven days a week. 6RP 285. However, it was possible to arrange 24-hour access by requesting such access from the manager, Donovan Edwards, who, at his discretion, could grant it by making a code change in the computer. 6RP 286. One typical reason for granting after-hours access is when people are transferring units. 5RP 255.

Mr. Edwards normally worked from 9:00 a.m. to 6:00 p.m. but he lived above the office and was on call, with his cell phone posted in the office window. 6RP 278-79.

On February 1, 2012, Angela Bohrer rented a unit at "A Storage Center." 5RP 235. On March 1, 2012, defendant's boyfriend, Daniel Ripley, also rented the unit next to defendant's unit. Ex. 110; 5RP 234. Defendant had authorized Ripley to have access to her unit. Ex. 109; 6RP 287. Ripley had similarly listed defendant as an authorized user on his lease. Ex. 110; 5RP 234.

Bohrer would visit the facility almost every day. 6RP 280. She would drive a dark red Ford Explorer into the facility and waive at Mr. Edwards through the window, and he would wave back. 6RP 284. Just about every time she went to the facility, she came in that vehicle. 6RP 284. When she went to the facility, it was more common to see Bohrer with Ripley than without him. 6RP 280. Although Mr. Donovan had seen Ripley drive the Explorer, it was more common for Bohrer to do so. 6RP 285.

On March 12, 2012, Ivan and Latisha Ahquin transferred from a smaller unit into a larger upstairs unit at the facility. 4RP 124-126; 5RP 230. In the unit they had most of their family's personal belongings, including a motorized dirt bike, an ATV recreational vehicle, sports equipment, luggage, tools, furniture, movies, and an assortment of other household items. 4RP 124-126; 5RP 230.

At some point during March of 2012, defendant contacted Mr. Edwards and requested 24-hour access, which was authorized. 6RP 285-86. However, Mr. Edwards could not remember the exact date she did so. 6RP 285-86.

Events from March 15 and 16 are particularly significant as that appears to be when the Ahquins' unit was broken into and the contents stolen. For that reason, events at the facility over those two days are discussed in particular detail in what follows. A timeline for those two days that correlates the use of Bohrer's and Ripley's gate codes with the admitted facility surveillance video clips is attached as Appendix A.²

March 15, 2012

On March 15, 2012, Ripley's code was used to enter the storage facility at 12:23 p.m. Ripley's code was used to exit the facility at 2:03 p.m. 5RP 250. That same day, defendant's code was used to enter the facility at 6:46 p.m. and Ripley's code was used to enter the facility again at 7:03 p.m. 5RP 251. Ripley's code was used to exit the facility at 8:12 p.m. 5RP 251.

² Exhibit 101, a compact disk containing security video contains a total of 11 video files. It is more convenient to access the video through Windows Explorer, which allows them to be played one at a time. If the disk is run directly from Media Player, it tends to run through all the files consecutively without stopping, making it difficult to relate the video to the trial testimony. At trial, each video file was referred to as a "clip," sequentially by the number 1 through 11 based upon the order in which they were last modified [i.e. saved]. Accordingly, to minimize confusion the State follows that practice in its brief as well.

In the surveillance video dated March 15, 2012, at 20:12 [8:12 p.m.], the Ford Explorer defendant and Ripley used is seen towing the Ahquins' ATV and three speaker boxes. 4RP 189; 6RP 285; Ex. 101, Clip 2, at 20:12 [8:12 p.m.]. The ATV had a distinctive dent on the front grill from a previous accident, which allowed the Ahquins to identify it in the video. 4RP 136.³

Defendant's code was used to exit the facility at 9:02 p.m.

Defendant then attempted to enter the facility four times between 10:23 p.m. and 10:30 p.m., but her code was denied because the facilities were closed for the evening and she did not have extended hours access. 5RP 252. At 11:15 p.m. that same evening, Ripley also tried to use his code to access the area but his code was also denied. 5RP 252.

However, two hours later, at 1:39 a.m. on what was now March 16, 2012, the defendant's code was used to exit the facility. 5RP 252. [This would suggest the defendant was admitted by the manager and granted after-hours access some time between 11:15 p.m. and 1:39 a.m.]

³ The video played back on the equipment at the storage facility was much clearer than the video obtained for the investigation and used at trial. This seems to be because the video was made by using a handheld video device to record the security screens at the storage facility and was not downloaded directly from the security system. See 4RP 177, 189-90; Ex. 101.

At some time on March 16, 2012, defendant was in the process of transferring units. 5RP 235, 262-63; Ex 106.

When she transferred units, Bohrer moved to a unit on the second floor next the Ahquins'. 5RP 235, 247, 262-63; Ex 106. Ripley's unit remained on the first floor. 5RP 244.

Unlike a move-in contract, determining when a unit transfer occurs is tricky and not always clear because transfers involve a more ambiguous time frame since the customer has to get permission to transfer to the new unit, the transfer of property takes time, and transfers are not always completed by customers, who sometimes end up remaining in their original unit for whatever reason. 5RP 232-33.

When she arranged the transfer, Bohrer also revoked Ripley's authority to access her unit. 6RP 287-88; Ex. 106. However, at some point she also then reinstated it again. 5RP 259. [Presumably this was before March 24, 2012, which is when she was arrested.]

March 16, 2012

On March 16, 2012, Ripley's code was used to enter the facility at 7:06 a.m. 5RP 253. The code was used to exit the facility at 7:46 a.m. 5RP 253. Ripley's code was again to enter at 7:48 a.m. 5RP 253. Defendant's code was also used to enter the facility at 7:56 a.m. and exit at 8:07 a.m. 5RP 254. Ripley's code was then used to open the exit gate at

9:24 a.m. and then used again to exit the facility one minute later at 9:25 a.m. 5RP 254.

The surveillance video dated 03-16-12 at 9:24 a.m. shows the red Ford Explorer approach the gate, stop at the keypad for entry codes, and shows the gate open. Ex. 101, clip 9, at 9:24 a.m. Then, instead of exiting, the red Explorer backs up, the gate shuts, the Explorer approaches the key pad about a minute later, and the gate opens again. Ex. 101, clip. 9 at 9:24 a.m. Another vehicle then comes up behind the Explorer, stops at the access pad for a moment, and then follows the Explorer through the open gate. Ex. 101, clip. 9 at 9:25 a.m. [The record is silent as to whether the second vehicle entered a code before the gate shut, or just used the gate opening for the red Explorer and followed it through.]

The surveillance video dated 03-16-12 at 9:50 a.m. shows Bohrer on the first floor at the elevator moving a cart load of items, including suitcases and an amplifier, into the elevator. Ex. 101, clip 10 at 9:50 a.m. She then moves another cartload of materials into the elevator at 9:50 a.m. Ex. 101, clip 10, at 9:50 a.m. Defendant was extremely pregnant with Ripley's child at the time and the video shows what appears to be a pregnant woman. 6RP 328, 330.

Ripley's code was then used to re-enter at 10:40 a.m. and exit at 10:47 a.m. 5RP 255.

The surveillance video dated March 16, 2012, at 10:58 a.m., shows [defendant] loading another dolly with the Ahquins' stolen storage bins, fishing poles, and a blue cooler, into the elevator. Ex. 101, Clip 11 at 10:58; 4RP 144, 178, 179. On that same video, a pair of large bolt cutters can be seen on the dolly defendant is pushing. Ex. 101, Clip 11 at 10:58; 4RP 186.

That same day, Ripley code was used to enter the facility at 11:10 a.m. and defendant's code was used to exit the facility at 11:17 a.m. 5RP 255.

On March 22, 2012, the Ahquins returned to their storage unit to find that their key did not fit into the padlock on the unit door. 6RP 280; 4RP 170. Upon closer inspection, they found that the padlock that was on their door was not the one they had originally used. 4RP 170. The Ahquins peered through a small hole in the door and noticed that their ATV, which had been placed right in front of the door, was missing. 4RP 128. The Ahquins immediately notified Mr. Edwards, who cut the lock off of their unit. 4RP 128-129.

When they had filled their unit, the Ahquins had quite a bit of stuff in there that was stacked neatly in boxes because it had to be stacked perfectly or it wouldn't fit. 3RP 129, 132. Once Mr. Edwards cut the lock off and the door was opened, the Ahquins noticed that their unit had been

ransacked. 3RP 129-30. Most of their belongings were missing, including the motorized dirt bike and ATV, things were broken, and everything was torn out of boxes. 3RP 130; 4RP 129-130; 171.

Mr. Edwards contacted the owner, Brandi Ulrey, who came to the facility. 5RP 236-238. The Ahquins called the police to report the break in and theft that same evening. 4RP 172. The police arrived at the facility and made a report. 4RP 172.

After the police left, the Ahquins reviewed the surveillance videos and gate access codes with Mr. Edwards and Ms. Ulrey to possibly identify any suspects. 4RP 134-135. While reviewing the surveillance video, Mr. Edwards could see Bohrer and Ripley together in some of the video, although they were not on a lot of the video. 6RP 294. It was after looking through the surveillance videos that Ms. Ulrey also pulled and reviewed the gate access codes. 5RP 243.

After seeing that the defendant's code was the only other one used to access the facility premises on March 12th, the day the Ahquins moved in, Ms. Ulrey escorted the Ahquins to defendant's unit. 4 RP 138; 5RP 243. When defendant moved units on March 16, her new unit was next to the Ahquins'. 5RP 247.

After the Ahquins and the management went to defendant's unit to look over the wall, they saw tire tracks on the sides of the walls that had to

be from a quad because they touched both sides of the walls. 4RP 194. The tracks led from in front of the Ahquins' unit, down the stairs, and directly to Ripley's unit. 4RP 194; 5RP 244-45.

The Ahquins' ATV had to have been moved down the stairwell, because they did not appear in the security footage for the elevators. 5RP 245. In Ripley's unit, the Ahquins saw their dirt bike and various other sports gear. 4RP 140.

Ulrey provided them with a ladder and allowed them to peer over the wall and into the unit through a foot long gap between the walls and ceiling. 4RP 139; 5RP 246. They then stood on the ladder and looked over the wall into Ripley's unit. 4 RP 138, 195, 5RP 243. They saw some of their stolen items inside. 4RP 195. Those included the stolen motorcycle and the three suitcases.

They then went back up to the defendant's unit and used the ladder to climb up and look over the wall into it. 5RP 247. In defendant's unit they could see their DVD rack and fishing poles. 4RP 141.

Ms. Ulrey then cut the locks off of defendant's and Ripley's units so that the Ahquins could have a better look inside. 5RP 247. The Ahquins identified more of their belongings in both defendant's and Ripley's unit. 4RP 145-46, 148-49, 195. In defendant's unit, the Ahquins identified their fishing poles, tool boxes, and their son's sporting

equipment. 4RP 145. In Ripley's unit they discovered their son's dirt bike gear, school supplies, and their suitcases. 4RP 146.

The Ahquins then contacted the police again and reported their findings. 4RP 141. The defendant's and Ripley's storage units remained undisturbed until police later obtained a warrant and searched them. 4RP 141-43.

Two days later, on March 24 at 7:26 p.m. Pierce County Sheriff's Deputy Seth Huber returned to the storage facility as part of his investigation. 6RP 325, 329. Upon arriving, Deputy Huber made contact with both defendant and Ripley. 6RP 325. Defendant was out front by the main gate and Ripley was toward the back of the storage complex. 6RP 327. The defendant's and Ripley's Ford Explorer was parked at the back of the storage complex. 6RP 327.

After initially contacting Angela Bohrer out front, Deputy Huber later re-contacted the defendant who was now at the back of the facility complex and at that time he arrested her. 6RP 328. Deputy Huber advised defendant of her of her constitutional rights. 6RP 328. Upon questioning, defendant initially told Deputy Huber that she and Ripley were moving items out of her storage unit and into the Explorer. 6RP 331. However, later she told the Deputy just the opposite; that she and Ripley were unloading the Explorer and placing items into her unit. 6RP 331.

The Explorer was impounded to the Sheriff's storage yard at the South Hill precinct. 7RP 353.

On March 26, 2012, Detective Jason Tate obtained search warrants and searched the storage units. 7RP 355. Defendant's unit was number E358. 7RP 358. In defendant's unit, officers recovered a number of items that had been stolen from the Ahquins. 7RP 398. Some of them included a Durabilt tool case, fishing rods and reels, Craftsman drills, a small tool kit, and a CD rack. 7RP 398-99. Also found in the unit were a set of red bolt cutters. 7RP 399

From Ripley's unit, items officers recovered included the Ahquins' motorcycle, and motorcycle accessories, tools, paint ball equipment, two or three suitcases, a fog machine, air tanks, and hoppers. 4RP 197-99, 205-06; 7RP 358; Ex. 54, 59, 64, 65, 68.

On March 28, 2012, Detective Tate served the search warrant on the Ford Explorer. 7RP 355. Other belongings from the Ahquins' unit were found inside the Explorer, including DVDs, camping equipment, exercise equipment, and electronics. 7RP 367. Inside the Explorer, police also discovered a wallet containing defendant's identification card, paperwork that listed a shared address for defendant and Ripley, as well as the vehicle registration which listed both defendant and Ripley as registered owners. 7RP 365, 372.

The Ahquins' ATV and equipment for their dirt bike were never recovered. 4RP 197.

C. ARGUMENT.

1. THERE IS SUFFICIENT EVIDENCE TO SUPPORT DEFENDANT'S CONVICTIONS WHERE THE JURY COULD INFER THAT DEFENDANT EITHER STOLE THE ITEMS OR ACTED AS AN ACCOMPLICE TO THE CRIMES.

The State bears the burden of proving each and every element of a criminal offense beyond a reasonable doubt. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the appellant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). In considering this evidence, “[c]redibility determinations are for the trier of fact and

cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

An accomplice is equally guilty as the person committing a crime. An accomplice is criminally liable for the crime of another if, “[w]ith knowledge that it will promote or facilitate the commission of a crime,” he or she “solicits, commands, encourages, or requests [another] person to commit it” or “aids or agrees to aid [another] person in planning or committing it.” RCW 9A.08.020(3)(a)(i).

In order to be convicted of a crime as an accomplice, the defendant need not be charged as an accomplice in the information. *State v. Bobenhouse*, 143 Wn. App. 315, 324, 177 P.3d 209 (2008) (citing *State v. McDonald*, 138 Wn.2d 680, 688, 981 P.2d 443 (1999)). “It is constitutionally permissible to charge a person as a principal and convict [that person] as an accomplice as long as the court instructs the jury on accomplice liability.” *Bobenhouse*, 143 Wn. App. 315, 324, 177 P.3d 209 (2008) (citing *State v. Davenport*, 100 Wn.2d 757, 765-65, 675 P.2d 1213 (1984)).

Accomplice liability is neither an element of the crime, nor an alternative means of committing the crime. *State v. Teal*, 152 Wn.2d 333, 338-339, 96 P.3d 974 (2004). The jury need not reach unanimity on whether a defendant acted as a principal or an accomplice. *Teal*, 152 Wn.2d at 339. So long as the jury is convinced that the crimes were committed and that the defendant participated in each of them, the jury

need not be agreed as to whether the defendant acted as a principal or accomplice. *Teal*, 152 Wn.2d at 339.

It was not necessary for the jury to distinguish whether defendant acted as the principle or an accomplice in committing the crime. The jury could find defendant guilty either as a principle or as an accomplice.

- a. There was sufficient evidence from which the jury could infer that the defendant was either a principal or accomplice to the crime of burglary.

Defendant was charged with one count of burglary in the second degree, under RCW 9A.52.030(1). CP 1. The statute states in part:

A person is guilty of burglary in the second degree if, with the intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling....

Thus, the State was required to prove 1) defendant or an accomplice entered or remained unlawfully in a building; 2) that the entering or remaining was with intent to commit a crime against a person or property therein. RCW 9A.52.030(1); *See, e.g., State v. McDonald*, 123 Wn. App. 85, 89-90, 96 P.3d 468 (2004); *See also* CP 84.

i. There was sufficient evidence for the jury to infer that defendant or an accomplice entered or remained unlawfully in the storage unit.

Someone clearly entered the Ahquin's unit and removed their property. 4RP 128. That property was found in the defendant's unit, Ripley's unit, and in the Explorer. 7RP 358, 367, 398-99. Not only did they own the Explorer in common, Bohrer frequently drove it, driving it to the facility more often than Ripley. 6RP 280, 284; 7RP 365, 372. At the time they were arrested Bohrer told Deputy Huber that she was moving stuff between her unit and the Explorer. 6RP 331. The Explorer was impounded at that point and when it was later searched, items stolen from the Ahquins were found in it too. 7RP 367

Additionally, there is surveillance video of defendant transporting items from the Ahquins' unit. Ex. 101, clip 10; 4RP 190-92. A second clip shows defendant loading another dolly with the Ahquins' stolen storage bins, fishing poles, and a blue cooler, into the elevator. Ex. 101, clip 11; 4RP 144, 178, 179.

The pattern of Bohrer's and Ripley's simultaneous and overlapping activity at the facility based upon the gate code records and the security video also suggests that Bohrer and Ripley were working together. *See* Appendix A.

From all this evidence, the jury could reasonably infer that defendant or entered or remained unlawfully in the Ahquin's storage unit, or that she was an accomplice to the person who did.

Defendant argues that the State failed to prove that defendant personally entered the Ahquins' unit. Appellant brief at 9. However, this argument fails because the State was only required to prove that “defendant or an accomplice” entered the unit.

Sufficient evidence supported the jury's inference that the defendant or an accomplice unlawfully entered or remained in the Ahquin's unit.

ii. The entry into the storage unit was with intent to commit a crime against property therein

Where the Ahquin's property was stolen and there was no other conceivable reason to cut the lock off the unit and enter it, there was sufficient evidence from which the jury could infer that the defendant or an accomplice entered the unit with the intent to commit a crime against property therein.

In proving burglary, “[t]he State is not required to charge and prove intent to commit a particular crime, but only the presence of criminal intent at the time of illegal entry.” *State v. Chelly*, 32 Wn. App. 916, 919, 651 P.2d 759 (1982).

Knowledge of criminal intent usually resides exclusively in the mind of the defendant. [A defendant] may unlawfully enter a building with the intent to commit a certain crime, and ultimately commit a different crime, or no crime at all. [The defendant] is nonetheless guilty of burglary.

Chelly, 32 Wn. App. at 919.

The Ahquins' returned to their storage unit on March 22 to discover that their property had been stolen from it. 4RP 128-30, 170-71. Again, the Ahquins' items were also discovered in defendant's storage unit, as well as in Ripley's unit, and the Ford explorer that was registered to both defendant and Ripley. 4RP 140-41, 145-46, 148-49, 195; 7RP 358. Security footage shows defendant transporting multiple carts with the Ahquins' items on them. 4RP 190-92; Ex. 101, clip 10 at 9:50 a.m.; Ex. 101, clip 11 at 10:58 a.m.

Bohrer's role as accomplice is further reinforced by the fact that she transferred units so that her new unit was adjacent to the Ahquin's. 5RP 235, 247, 262-63; Ex. 106.

The jury could infer that this was done to facilitate access to the Ahquin's unit and to hide their activities on the second floor from suspicion.

These facts provide sufficient evidence for the jury to infer that when the defendant or an accomplice unlawfully entered the Ahquins' unit, that was done with the intent to commit the crime of theft.

- b. There was sufficient evidence from which the jury could infer that the defendant was a principal or accomplice to unlawful possession of a stolen vehicle.

Defendant argues that there was insufficient evidence to show that defendant possessed the stolen motorbike. Appellant's brief at 13. That claim is without merit where the jury could find that the defendant was an accomplice to the crime.

Defendant was charged with one count of unlawful possession of a stolen vehicle, under RCW 9A.56.068. The statute states in part:

A person is guilty of possession of a stolen vehicle if he or she possesses a stolen vehicle.

Possession is defined under RCW 9A.56.140 as:

...[D]efendant or an accomplice knowingly received, retained, possessed, or concealed a stolen motor vehicle; That the defendant or accomplice acted with knowledge that the motor vehicle had been stolen; That the defendant or accomplice withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto[.]

Thus, the State needed to prove 1) that defendant or an accomplice knowingly received, retained, possessed, or concealed a stolen vehicle; 2) that defendant or accomplice acted with knowledge that the motor vehicle had been stolen; and 3) that defendant or an accomplice withheld or appropriated the motor vehicle to the use of someone other than the true

owner or person entitled thereto. See *State v. Polo*, 169 Wn. App. 750, 760-61, 282 P.3d 1116 (2012); See also CP 90.

i. Defendant or accomplice knowingly possessed or concealed a stolen motor vehicle.

Possession may be actual or constructive. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). A defendant actually possesses an item if he has physical custody of it; he constructively possesses the item if he has dominion and control over it. *Jones*, 146 Wn.2d at 333.

Dominion and control can be established by circumstantial evidence. *State v. Chavez*, 138 Wn. App. 29, 34, 156 P.3d 246 (2007). In a review of whether there is sufficient evidence of dominion and control, the court looks at “the totality of the situation to determine if there is substantial evidence tending to establish circumstances from which the jury can reasonably infer that the defendant had dominion and control of the [items] and was thus in constructive possession of them.” *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977), *overruled on other grounds by*, *State v. Lyons*, 174 Wn.2d 354, 275 P.3d 314, 320 (2012).

Thus, the court looks to the various indicia of dominion and control with an eye to the cumulative effect of a number of factors. *Partin*, 88 Wn.2d at 906. One important factor the court has recognized is having actual dominion and control over the premises where the prohibited item is found. *State v. Shumaker*, 142 Wn. App. 330, 334, 174

P.3d 1214 (2007). A jury determines the weight of the inference created between defendant's actual control over the premises and his dominion and control over the prohibited item. *State v. Turner*, 103 Wn. App. 515, 524, 13 P.3d 234 (2000). The control need not be exclusive, but the State must show more than mere proximity to the prohibited item. *State v. Nyegaard*, 154 Wn. App. 641, 226 P.3d 783 (2010).

Conceal is not otherwise defined in RCW 9A.56.140(1).

According to the standard dictionary definition, it means:

1: to prevent disclosure or recognition of: avoid revelation of: refrain from revealing: withhold knowledge of: draw attention from: treat so as to be unnoticed [...] **2:** to place out of sight: withdraw from being observed: shield from vision or notice [...].

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, p. 468 (2002).

The vehicle in this case, the dirt bike motorcycle, was found in Ripley's storage unit. 7RP 358. That he possessed or concealed it is not at issue. It was found along with other items stolen from the Ahquin's unit.

Ripley had dominion and control of the stolen property by having it secured in his storage unit. 7RP 358. The jury could also have inferred that defendant was a principal where she was authorized to access Ripley's unit. 4RP 140; 5RP 234.

In addition to possessing the stolen motorcycle, the jury could also infer that the defendant and Ripley were accomplices in concealing it where it was secured inside Ripley's unit, and where the padlock on the

Ahquin's unit door had been replaced in an apparent attempt to conceal that the unit had been broken into. *See* 4RP 170.

The evidence was sufficient for the jury to find Ripley's possessed the stolen motorcycle, and that Bohrer was an accomplice or even a principal to that possession.

ii. Defendant or accomplice acted with knowledge that the motor vehicle had been stolen.

Where the jury could find that Bohrer and Ripley were accomplices in the burglary it could also find that the possession of the stolen motorcycle was a product of the burglary, so that the two were also accomplices in the possession of the stolen motorcycle. This is particularly so where various items of the Ahquin's property were found in both Bohrer and Ripley's units, and in their commonly owned red Explorer. 7RP 358, 367, 398-99.

The jury could infer defendant's guilty knowledge that the dirt bike was stolen based on the fact that defendant had some of the Ahquin's stolen property in her storage unit and in the red Ford Explorer. 7RP 358, 367. Defendant was also seen on video transporting items that were originally secured in the Ahquins' unit. Ex. 101, clip 7. Moreover, defendant was authorized to access Ripley's unit. 4RP 140.

Where the jury could infer that the defendant and Ripley were accomplices in the burglary, it could also infer the defendant's guilty

knowledge as an accomplice to Ripley's possession of the stolen motorcycle.

iii. Defendant or accomplice withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto.

Defendant or Ripley excluded the Ahquins from accessing the dirt bike when it was removed from its original location and secured in Ripley's unit. 7RP 358. They also did so by concealing the theft where they placed their own lock on the Ahquin's unit, thereby making it appear the Ahquins unit had not been disturbed, and also by depriving them of access to their unit, preventing discovery of the theft. *See* 4RP 170.

The jury could reasonably infer that either defendant or Ripley withheld the dirt bike from its true owner where the motorcycle was removed from the Ahquin's unit, kept in Ripley's locked unit, and where they placed a lock on the Ahquin's unit to conceal the theft.

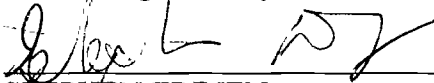
D. CONCLUSION.

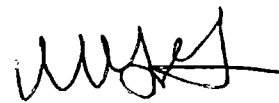
When considering the evidence in the light most favorable to the State, there was sufficient evidence for the jury to determine that defendant was guilty of burglary in the second degree and unlawful possession of a stolen vehicle. The evidence was sufficient to show that defendant committed burglary, and could be found criminally liable under

the standard of accomplice liability. Furthermore, the evidence was sufficient to show that defendant unlawfully possessed the dirt bike. The State respectfully requests this Court to affirm defendant's conviction.

DATED: October 16, 2013.

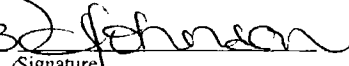
MARK LINDQUIST
Pierce County
Prosecuting Attorney


STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925


Miryana Gerassimova
Appellate Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by file ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10/16/13 
Date Signature

Appendix A

Timeline of access codes
and
surveillance video
from
March 15 and 16, 2012

Timeline

Date	Time	Enter	Exit	Citation
03-15-12				
	12:23 p.m.	Ripley		SRP 250
	2:03 p.m.		Ripley	SRP 250
	6:46p.m.	Bohrer		SRP 250
	7:03 p.m.	Ripley		SRP 251
	8:12 p.m.		Ripley	SRP 251
	8:12 p.m. [20:12]	Video Surveillance video shows red Ford Explorer towing Ahquins' ATV and three speaker boxes		Exhibit 101, Clip 2; 4RP 190
	9:02 p.m.		Bohrer	SRP 251
	10:23p.m. to 10:30p.m.	Bohrer Attempted to enter 4 times but code was denied because it was after hours		SRP 252
	11:15 p.m.	Ripley Attempted to enter but code was denied because it was after hours		SRP 252
	11:18 p.m. [23:18]	Video Surveillance video shows Bohrer pushing dolly with suitcases on it. [However there was no testimony about this clip so they were not identified as to whom they belonged to.]		Exhibit 101, Clip 7

Date	Time	Enter	Exit	Citation
3-16-12				
	1:39 a.m.		Bohrer	5RP 252
	7:06 a.m.	Ripley		5RP 253
	7:46 a.m.		Ripley	5RP 253
	7:48 a.m.	Ripley		5RP 253
	7:56 a.m.	Bohrer		5RP 254
	8:07 a.m.		Bohrer	5RP 254
	9:24 a.m.		Ripley	5RP 254
	9:25 a.m.		Ripley	5RP 254
	9:24 a.m. [9:24 a.m.] to 9:25 a.m. [9:25 a.m.]	Video Surveillance video showing the red Explorer pulling up to the exit code keypad, and the gate opening. Instead of exiting, the Explorer backs up and the gate shuts. About a minute later, the Explorer approaches the keypad again, the gate opens and the Explorer exits, followed by another vehicle.		Exhibit 101, Clip 9
	9:50 [9:50 a.m.]	Video Surveillance video showing Bohrer pushing a dolly with the Ahquins' two suitcases and an amplifier.		Exhibit 101, Clip 10; 4RP 190-92
	10:40 a.m.	Ripley		5RP 255
	10:47 a.m.		Ripley	5RP 254
	10:58 a.m. [10:58]	Video Surveillance video showing Bohrer pushing a dolly with the Ahquins' blue and white cooler, storage bins, and step stool; a pair of red bolt cutters is seen on top of the storage bins		Exhibit 101, Clip 11; 4RP 192
	11:10 a.m.	Ripley		5RP 255
	11:17 a.m.		Bohrer	5RP 255

PIERCE COUNTY PROSECUTOR

October 16, 2013 - 10:38 AM

Transmittal Letter

Document Uploaded: 443473-Respondent's Brief.pdf

Case Name: State v. Angela Leigh Bohrer

Court of Appeals Case Number: 44347-3

Is this a Personal Restraint Petition? Yes ☐ No ☒

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

☒ Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: **hjohns2@co.pierce.wa.us**

A copy of this document has been emailed to the following addresses:

SCCAAttorney@yahoo.com